IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 3280 of 2007()

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CRA.83/2007 of SPL. COURT (NDPS ACT CASES), THODUPUZHA
ST.595/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NEDUMKANDOM

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REVN. PETITIONER:

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SAJU PAUL,S/O.POULOSE,MATTAKKATTU VEEDU,
MOOKKANNUR KARA,ALUVA TALUK,ERNAKULAM DISTRICT.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.ANOOP JOSEPH
SRI.ANOOP.V.NAIR
SRI.ABHILASH AKBAR
SRI.T.B.SIVAPRASAD

RESPONDENTS:

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1. POOVATHI, W/O.POULOSE, THENNALIL VEEDU,
BL RAM KARA, CHINNAKKANAL VILLAGE, UDUMBANCHOLA TALUK.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V. RAMKUMAR, J.**

**Crl. R.P. No. 3280 OF 2007**

**Dated this the 11th day of September, 2007**

**O R D E R**

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.595/2004 on the file of the J.F.C.M., Nedumkandom challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner contended that the cheque was issued only as a security and it was really a real estate transaction between the accused and the complainant and the cheque was offered only as a security. He further submitted that the cheque was not returned for want of sufficient fund in the account of the accused but on the ground that drawer's signature is incomplete. In such a case there was an added burden on the complainant to prove that cheque was returned for the reason that funds were insufficient in the account of the accused. Neither the ledger was produced nor the Bank Manager was examined to prove the ground on which cheque was dishonoured.

5. Both the courts below have considered the defence with regard to the cheque being offered as a security. The revision petitioner is an educated person dealing with real estate matters and the very fact he did not take any steps to get back the cheque in question will show that the defence set up by him was a false one. With regard to the contention that the return of the cheque on the ground that drawer's signature was incomplete could not amount to an offence punishable under section 138 of the Negotiable Instruments Act, in the first place, the said contention was not raised before the courts below. Secondly, when the defence contention that the cheque was offered as a security is ex facie not sustainable his further contention that the return of the

cheque was not on a ground enumerated under section 138 of the Negotiable Instruments Act cannot be entertained. Going by the interpretation placed on section 138 of the N.I. Act, even instances like closure of account, the accused countermanding payment etc. have been judicially settled to be covered by the section. Such being the position, I am not inclined to dislodge the finding recorded concurrently by the courts below to the effect that the revision petitioner committed the offence punishable under section 138 of the Negotiable Instruments Act. Equally misconceived his contention that the non-production of the ledger and non-examination of the Bank Manager is fatal to the prosecution. The fact that Ext.P1 cheque has been dishonoured is evidenced by Ext.P3 memo which is sufficient to hold that it was dishonoured in terms of the section 138 of the N.I. Act. The accused did not even sent a reply to the statutory notice issued to him by the complainant. It is taking into account all the relevant facts and circumstances of the case that the courts below concurrently found that the revision petitioner has committed the alleged offence. Sitting in the rarefied revisional jurisdiction, I find it impermissible for this court substitute the finding of fact recorded by the courts below with its own finding. Both the courts below have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the

oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.6,69,000/- (Rupees six lakhs and sixty nine thousand only) within six months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

**(V. RAMKUMAR, JUDGE)**

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